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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,636	01/24/2002	Sam Zhadanov		3628

7590 07/11/2003  
Sam Zhadanov  
2942 West 5th St.  
Brooklyn, NY 11214

EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 07/11/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/053,636

Applicant(s)

ZHADANOV ET AL.

Examiner

Korie H. Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 and 10, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US Patent No. 2,689,995). Smith discloses a device comprising a holding element (4) having at least one elastically displaceable formation (the part of the band that engages the worm teeth 6, Col. 2, lines 30-37) and the elastically displaceable formation being on elastically deformable part (the band 4 constricts and expands constituting elastic deformation part, Col. 2, lines 30-37); wherein the holding element

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has a tubular passage (4) with longitudinal axis perpendicular to pivot axis (see attached illustration, fig. 1); wherein the first formation are teeth (the thread on the worm 6) while the at least one formation is a tooth (the part of the band 4 that engages the worm teeth, Col. 2, lines 30 and 37). Regarding claim 10, it is inherent that the holding element will be in the intended operative position when it is fixed to the attaching element and in an inoperative position when it is not fixed to the attaching element.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phelps (US Patent no. 1,533,136) in view of Chen (US patent no. 5,765,794). Phelps discloses a device comprising a holding element (10), an intermediate element (6) and an attaching element being a vacuum (1) wherein the intermediate element turnably connected with the attachment member (1) and the holding member (10) at two axes extending parallel to one another (figure 1), wherein the holding element has a tubular passage having a longitudinal axis (extending into the page in figure 2) which is perpendicular to the pivot axis (disposed along the plane of the page) of the holding element; wherein the holding element (10) is adjustable about axis (at 12) via friction engagement. However, Phelps does not disclose that the holding element 2 is adjustable about its pivot axis via plural formations of teeth and tooth as in a ratchet type

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engagement. Ratchet type inter-engagement are notoriously old and well-known especially for adjusting angles between two members. Chen demonstrates such ratchet type engagement wherein one member has plural teeth (22, fig. 2) and the other member has an elastically displaceable tooth (142) for engaging the teeth for plural angle adjustment. To modify friction type angle adjustment between the holding element and the intermediate member of Phelps such that it is of the ratchet type interengagement with teeth formation on the sleeve (12) and the tooth on the holding element (10) would have been obvious to one of ordinary skill in the art. Such modification would have resulted in a positive plural angular adjustment as taught by Chen.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bisoff et al and Wilson further demonstrate ratchet type angular adjustment in a holding element. Jones, Christie, Wilson, Watts, Gillaspay, Eplan, Ting, Maznik, and Judell teach a holding device with an intermediate element turnably connected to an attachment element at one end and a holding element at the other end. Zhadanov et al and Weiss teach suction cup shower head holder.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Korie H. Chan  
Primary Examiner  
Art Unit 3632

khc  
July 8, 2003